

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 268 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

SALIM KANIO @ SALIM RAJMAHMAD PATHAN

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR.HL JANI,AGP,for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 13/07/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 6-1-1998 passed by the Police Commissioner, Surat City, under Section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA Act"), has filed this petition under Article 226 of the Constitution of India challenging the legality and validity of the order of detention.

In the grounds of detention supplied to the petitioner, the detaining authority has placed reliance on two criminal cases registered against the petitioner. C.R.No. 71/96 is filed for offences punishable under Sections 384, 385, 504, 506(2), 511 and 114 of the Indian Penal Code and C.R.No. 170/97 is filed for offences punishable under sections 143, 147, 148, 149, 504, 507 of the Indian Penal Code and Section 135 of the Bombay Police Act. These criminal cases are pending for trial in the competent Court of law. Over and above these criminal cases, there are unregistered offences against the petitioner. As can be seen from the statements of witnesses, whose identity has not been disclosed by the detaining authority in exercise of the privilege conferred by Section 9 (2) of the PASA Act, the petitioner is also alleged to have been involved in the incidents of 1-12-97, 9-11-97 and 21-10-97 wherein the petitioner had quarrel with the witnesses on trifling grounds. When quarrels took place with these witnesses, people who are the residents of the area and the passer-by gathered. However, they ran away helter skelter and the shops, cabins and lorry-gallas were closed and the even tempo of life was disturbed.

On the basis of the aforesaid material, the detaining authority recorded a finding that the petitioner is a dangerous person within the meaning of Section 2(c) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention against the petitioner, which has been challenged by the petitioner by way of this petition.

This petition is required to be allowed on the ground that assuming for the sake of arguments that the allegations made against the petitioner are true, the same at best can be treated as breaches of law and order and not public order. I have gone through the statements of the witnesses which are stereo-type. Reading the same, it clearly establishes without any manner of doubt that the statements are quite general and vague in nature and the alleged incidents are against individuals and the general public is not concerned at all and, therefore, it cannot be contended that the petitioner is involved in committing breaches of public order. Even if the allegations made are believed to be true, the same at best can be termed as breach of law and order and in no circumstances the same can be termed as breach of public order. Consequently, therefore, the satisfaction arrived at by the detaining authority that the petitioner is a

dangerous person is also visited . The order of detention is therefore liable to be quashed and set aside.

In the result, this petition is allowed. The order of detention dated 6-1-1998 is quashed and set aside. The detenu Salim Kanio @ Salim Rajmahmad Pathan is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs.

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